

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AUSTIN LARRY JOHNSON,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEFFREY A. JOHNSON,

Respondent-Appellant,

and

HEATHER MARTIN,

Respondent.

UNPUBLISHED

October 5, 2004

No. 254507

Dickinson Circuit Court

Family Division

LC No. 03-000507-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the order terminating his parental rights following the voluntary release of his parental rights to the minor child. MCL 710.29(7). We affirm.

Respondent-appellant argues that he received ineffective assistance of counsel. However, respondent-appellant did not file a motion for a new trial or seek an evidentiary hearing before the trial court. In analyzing a claim of ineffective assistance of counsel where a party did not move for an evidentiary hearing or new trial, this Court's review is limited to the existing record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). To establish ineffective assistance of counsel, a party must show (1) that counsel's failure fell below an objective standard of reasonableness under prevailing professional norms, (2) that there is a reasonable probability that, notwithstanding counsel's error, the result of the proceedings would have been different, and (3) that the result of the proceedings was fundamentally unfair or unreliable. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

Respondent-appellant had two court-appointed attorneys, the first of whom was discharged upon the motions of both respondent-appellant and the attorney. On appeal,

respondent-appellant alleges that this first attorney was ineffective because he failed to call witnesses at a hearing, to provide respondent-appellant with documents in a timely manner, and to request that proceedings be delayed until after respondent-appellant's parole date. The hearings at which this attorney represented respondent-appellant were dispositional and review hearings that largely concerned the child's mother and at which the trial court made no rulings that affected respondent-appellant's parental rights. From the record before us, we see no error and no possible prejudice to respondent-appellant.

Respondent-appellant also contends that his second appointed attorney was ineffective for failing to properly advise him about his voluntary relinquishment of his parental rights. The record before us bears no support for this claim. Respondent-appellant was closely questioned by the trial court and indicated his understanding of the release and its ramifications.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood